

REMARKS

Presently, claims 18-34 are pending in the application. Claims 18 and 29-31 have been amended to more clearly recite the present invention, to place the claims in better U.S. form and to correct formal errors noted by Applicants. Support for the features added to independent claims 18 and 29 may be found, for example, at page 4, line 1 – page 5, line 2 and the paragraph bridging pages 14-15 of the specification. The amendments to claims 30 and 31 are of a formal nature. Accordingly, no new matter has been added to application by the foregoing amendments.

Examiner Interview

Applicants and the undersigned thank Examiner Manning for the courtesies extended during a personal interview conducted on August 17, 2005, to discuss the present application and Office Action. During the interview, the present rejections and the cited prior art of U.S. Patent No. 5,652,615 to Bryant (“Bryant”) were discussed. Applicants’ reasons as to why the presently pending claims, as amended, are distinguishable over the prior art were also discussed. Such reasons are detailed below.

As a result of the interview, the Examiner stated that the proposed amendments and arguments with respect to independent claim 18 were understood and appeared to be compelling, but reserved the right to review Applicants’ arguments in detail upon submission of a formal response. The amendments and arguments submitted in this paper are substantively the same as the amendments and arguments discussed with the Examiner during the interview.

Formal Rejections -- § 112

The Examiner has rejected claims 18 and 29 under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Examiner contends that the parenthetical expression “(avails)” in each of these claims makes it unclear as to whether the phraseology following the parenthetical are part of the claimed invention.

Initially, Applicants respectfully point out that the term “(avails)” was intended to be synonymous with the term “advertising opportunity”, as is indicated in the

specification (see, for example, page 4, lines 1-4) and as is well-known in the art. However, to expedite prosecution of this application, although not necessarily agreeing with the Examiner, Applicants have amended independent claims 18 and 29 to recite -- one or more advertising opportunities or avails....--, and removed all other references to "avails" in the claims. Accordingly, in view of the foregoing amendments and remarks, Applicants respectfully submit that the Examiner's § 112, second paragraph rejection of claims 18 and 29 have been overcome. Reconsideration and withdrawal of the Examiner's § 112, second paragraph rejection of claims 18 and 29 are respectfully requested.

Prior Art Rejection – § 102(b)

The Examiner has rejected claims 18, 21, 27, 29, 31, 32 and 34 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,652,615 to Bryant *et al.* ("Bryant"). The Examiner contends that Bryant teaches the creation of a plurality of subavails that are targeted to a particular audience group and aggregating the subavails to create one or more groups of subavails, resulting in Applicants' claimed invention. Applicants respectfully traverse this rejection.

Bryant discloses a system for broadcasting composite programs to particular audiences. In Bryant, base program content 310 (e.g., substantive program content) is decoupled from fill content 320 (e.g., advertisements), such that each target audience may be exposed to specified fill material while viewing the same base program as the other target audiences. The fill material is based on the demographics of the particular target audience. Bryant discloses that the base and fill material segments are arranged within a broadcast signal 300 in a temporal manner, such that the segments are substantially without overlap (see Fig. 3 of Bryant). Bryant further discloses that the fill segments 320 may be separately identified and that multiple fill segments may be carried during the same time period on the circuit carrying the associated program content. Bryant's system may select and insert the desired fill segment during distribution of the program.

Applicants' invention is directed to a method and system of creating one or more advertising subavails and aggregating the subavails into groups for sale to advertisers.

Typically, avails purchased by an advertiser have an expected viewership associated therewith. However, those avails are generally directed to multiple audiences. In Applicants' invention, avails are divided into subavails, and each subavail is associated with a particular target audience. The subavails are aggregated into groups. For example, a group of subavails may correspond to the same target audience. Additionally, the subavails are groups such that the total expected viewership of the group is at least as large as the expected viewership that an advertiser would have captured if a single, undivided avail (in that group) had been purchased. Each subavail group may be sold to an advertiser. Therefore, the advertiser purchases a group of different subavails, but which collectively will reach a greater percentage of the desired audience, while still allowing the advertiser to only make a single purchase.

For a rejection under § 102(b) to be proper, a reference must disclose, either explicitly or inherently, each and every element of the claimed invention. Applicants respectfully submit that Bryant does not teach each and every element recited in independent claim 18.

Independent claim 18, as amended, recites:

A method of managing advertisement opportunities or avails in a television network environment, the method comprising:

- (a) recognizing one or more advertisement opportunities, each advertisement opportunity having an expected viewership;
- (b) creating a plurality of subavails based on the recognized advertisement opportunities, wherein each subavail is directed at a target audience group and each subavail is associated with a portion of the expected viewership of its corresponding advertisement opportunity; and
- (c) generating one or more groups of subavails by aggregating the plurality of subavails from at least two of the advertisement opportunities, wherein at least one of the groups of subavails has a total expected viewership greater than or equal to the expected viewership of one of the advertisement opportunities from which the subavails in the at least one group originated.

Bryant does not disclose a system where the subavails are grouped such that the expected viewership of the group is “greater than or equal to the expected viewership of one of the advertisement opportunities from which the subavails in the at least one group originated.” Bryant is completely silent with respect to expected viewership of any portion of the broadcast signal 300, including the fill segments 320. Furthermore, Applicants respectfully disagree with the Examiner’s assertion that it is implicit in Bryant that a “targeted advertisement segment group will have an expected viewership greater than or equal to the expected viewership of any one segment.” In Bryant, there is no disclosure that there is any viewership relationship with respect to any of the fill segments or “groups” thereof. Even though it may be *desirable* for an advertiser to utilize a group of segments that includes an expected viewership greater than the viewership of one of those segments, such a desire in no way means that Bryant actually *discloses* a system or grouping of subavails with such viewership characteristics. That is, Bryant cannot be read in a manner to disclose something just because it would be desirable or advantageous to have such a feature. In the present invention, the aggregation of the subavails results in groups of subavails that have an expected viewership that is greater than or equal to the expected viewership of at least one of the avails from which the subavails forming those groups came. Moreover, Bryant certainly does not disclose that the groups of subavails are aggregated from “at least two of the advertising opportunities.” Therefore, Bryant does not disclose each and every element of independent claim 18. Accordingly, independent claim 18 is believed to be allowable over Bryant.

Similarly, new independent claim 29 recites “a grouping module configured to create one or more groups of subavails by aggregating the plurality of subavails from at least two of the advertisement opportunities, wherein at least one of the groups of subavails has a total expected viewership greater than or equal to the expected viewership of one of the advertisement opportunities from which the subavails in the at least one group originated.” For the same reasons discussed above with respect to new independent claim 18, Bryant does not disclose all of the elements of new independent claim 29. Accordingly, new independent claim 29 is believed to be allowable over

Bryant. Reconsideration and withdrawal of the Examiner's § 102(b) rejection of claims 18, 21, 27, 29, 31, 32 and 34 are respectfully requested.

Prior Art Rejection – § 103(a)

The Examiner has rejected claims 19-20, 22-26, 28, 30 and 33 under 35 U.S.C. §103(a) as being unpatentable over Bryant in view of International Patent Application Publication No. WO 00/33163 to Eldering (“Eldering”). For the same reasons discussed above with respect to the Examiner’s §102(b) rejection, independent claims 18 and 29 are believed to be allowable over Bryant. Applicants respectfully submit that Eldering does not teach or suggest any of the features missing from Bryant. Accordingly, independent claims 18 and 29 are believed to be allowable over the combination of Bryant and Eldering.

Dependent claims 19-28 and 30-34 are allowable at least by their dependency on independent claims 18 and 29, respectively. Reconsideration and withdrawal of the Examiner's § 103(a) rejection of claims 19-20, 22-26, 28, 30 and 33 are respectfully requested.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully submit that the Examiner's rejections have been overcome, and that the application, including claims 18-34, is in condition for allowance. Reconsideration and withdrawal of the Examiner's rejections and an early Notice of Allowance are respectfully requested.

Respectfully submitted,

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By: Andrew W. Spicer

Andrew W. Spicer
Registration No. 57,420
Technology, Patents, & Licensing, Inc.
6206 Kellers Church Road
Pipersville, PA 18947
Telephone: 215-766-2100
Facsimile: 215-766-2920